

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8654 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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LALJIBHAI R SOALNKI

Versus

DIVISIONAL DIRECTOR  
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Appearance:

MR BC DAVE for Petitioner

MR PRANAV G DESAI for Respondent No. 1  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 09/02/2001

ORAL JUDGEMENT

The petitioner has preferred this petition against the respondent above named under Article 226 and 227 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the

impugned order at Annexure 'A' terminating the services of the petitioner and also striking off the name of the petitioner from the waiting list of the bus conductors as well as for directing the respondent corporation to reinstate the petitioner in service as Bus Conductor on daily wages without any backwages. The facts may be briefly stated as follows:

2. The petitioner was working as badali bus conductor in the employment of the respondent Corporation which is incorporated under the Road Transport Corporation Act, 1950. It was found on 8.4.1976 that when the petitioner was working as badali Bus Conductor in a bus belonging to the respondent, he had not issued tickets to some passengers and had also not collected fares from them. Thereafter, the respondent passed order dated 24.8.1976 placed at Annexure 'A' deleting his name from the waiting list prepared by the respondent for recruiting candidates on the post of bus conductor in the employment of the respondent. Though the order was passed on 24.8.1976 for deleting the name of the petitioner from the waiting list, the petitioner remained at home for about 10 years or little over and thereafter, he approached the Government Labour Officer at Vadodara for making reference to the Labour Court for challenging the order of his termination from service. The said application was made on 25.9.1986, which is placed at Annexure 'B' at page 11. Thereafter, it appears that the Government Labour Officer, Vadodara had called the petitioner for discussion and conciliation and thereafter, he passed order that since the name of the petitioner was deleted 10 years back and since he had not completed the required number of days in the employment of the respondent and since no reasonable explanation was afforded for the delay of 10 years, there was no reason to refer the matter to the Labour Court and accordingly the Government Labour Officer, Vadodara directed that the matter may be treated as closed. The said order was passed on 21.10.1986, which is placed at Annexure 'C'. Thereafter the petitioner issued notice to the respondent on 17.11.1986 requiring the respondent Corporation to reinstate the petitioner in service. Copy of the said notice is placed at page 15. It seems that the respondent did not take the petitioner in service and, therefore, the present writ petition has been filed before this court.

3. It has been contended here that the respondent has committed illegality in passing the aforesaid order without any enquiry and without affording opportunity of being heard and, therefore, the respondent's action is

illegal. The petitioner has, therefore, preferred this petition on 16.9.1989 for the aforesaid relief.

4. On receiving the petition, rule was issued and it was served upon the respondent. Mr Pranav G Desai appears before the court in response to the service of rule. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate for the petitioner had argued at length that the petitioner was a badali bus conductor and his services have been terminated by order dated 24.8.1976, on an allegation that the petitioner allowed certain passengers to travel in the bus on 8.4.1976. That the petitioner did not issue tickets to them and did not collect fare from them. Learned Advocate for the petitioner had argued at length that no enquiry was held against the petitioner and without any enquiry and without affording any opportunity of being heard, the services of the petitioners were terminated illegally and, therefore, he should be reinstated at least without backwages.

5. On the other hand, learned Advocate Mr P G Desai, on behalf of the respondent, has also argued at length saying that the service of the petitioner have not been terminated by order dated 24.8.1976. That only his name from the waiting list has been deleted.

6. On going through the record, there is nothing on record to show that the services of the petitioner was terminated on the aforesaid consideration. It is not much in dispute that the petitioner was badali bus conductor. Therefore, his services would be procured by the respondent as and when there would be some absence of some of the bus conductors in the employment of the respondent. In other words, if there is no absence of any bus conductor from duty, the respondent would not require services of the petitioner. Therefore, there is nothing on record to show that the services of the petitioner were terminated on account of the aforesaid default on his part. The petitioner has not produced any order or other materials to show that his services were terminated by the respondent on 24.8.1976 on account of the aforesaid default. Therefore, there is no material available with the court to hold that the services were terminated on the aforesaid consideration. In absence of any such material, it would not be possible for the court to hold that the termination is illegal.

7. On the other hand, the order dated 24.8.1976 produced by the petitioner at Annexure 'A' at page 10 only shows that the name of the petitioner has been

deleted from the waiting list. This order does not speak of termination of his service. It would be very much pertinent that though the name of the petitioner has been deleted from the waiting list by order dated 24.8.1976, the said action or order of the respo[ndent has not been questioned by the petitioner and no relief has been claimed in respect thereto. Moreover, when the petitioner had contacted the Government Labour Officer in 1986, it was made clear to him that the petitioner has approached the said office very late after 10 years and no reasonable explanation was offered for the said delay. Therefore, the reference has not been made by the said office of the Labour Court. Again it is pertinent to note that the petitioner has not challenged the said order of the said Labour Officer before this court. Therefore, it is not open to this court to decide as to whether or not the Government Labour Officer has committed any illegality in rejecting the application of the petitioner for making reference to the Labour Court. Another obstacle in the way of the petitioner is that the petitioner approached the Labour Court after 10 years from the alleged termination of service in 1976. Termination, according to the case of the petitioner took place in 1976 and an approach was made to the Government Labour Officer by the petitioner in 1986. This makes it clear that the reference was sought to be made after 10 years. The Government Labour Officer has given reasons for not referring the matter to the Labour Court and, there he has stated that it was a matter of delay of 10 years and no reasonable explanation to the satisfaction of the officer was assigned. It is again to be noted that though the Government Labour Officer declined to refer the matter to the Labour Court in October, 1986, the petitioner again waited for 3 years and submitted the present petition only in September, 1989. Therefore, again there is a delay on the part of the petitioner in preferring the petition 3 years after the date of order of the Labour Court declining to refer the matter to the Labour Court.

8. In the aforesaid view of the matter, the matter is clearly time barred, on the one hand. If it further suffers from delay, laches and acquiescence. Cause of action is said to have been arisen in 1976. The petition has been filed in 1989. Even the Government Labour Officer was moved in 1986. Therefore, at every stage and every occasion, there is delay committed by the petitioner. In that view of the matter, I am of the clear opinion that such a delayed petition cannot be entertained. It is more so, when the petitioner has not challenged the order of deletion of his name from the

waiting list. He has also not challenged the order of the Government Labour Officer declining to refer the matter to the Labour Court. Therefore, even on this consideration, there is no merit in this petition and the same is deserved to be dismissed.

9. The petitioner has stated that he was given assurance that he would be taken back in service. But this allegation is without any foundation and even the Government Labour Officer was not satisfied with the said assertion of the petitioner and therefore, it is not possible for this court to accept the said version of the petitioner to be true. In the aforesaid view of the matter, there is no merit in the present petition and even otherwise it is barred by delay, laches and acquiescence and it is barred by limitation. In this view of the matter, this court acting as constitutional functionary exercising constitutional powers and functions and jurisdiction, would not entertain a petition which has been filed after lapse of not less than 13 years. It is more so, when the petitioner was not in service when the petition was filed. Under the aforesaid circumstances, this petition is ordered to be dismissed. Rule is discharged. No order as to costs.

9.2.2001 [D P Buch, J.]

msh